IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5601 OF 2004

Pralhad Kumar Ajwani ...Applicant

Versus

Superintendent of Police,

CBI, ACB, MUMBAI & Anr. ...Respondents

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Mr.Adhik Shirodkar, Sr.Counsel with Mr.Rajendra Shirodkar for Applicant.

Mr.Ejaz Khan for Respondent No.1.

Mr.D.R.More, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 16, 2004.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. The Applicant is arrested in connection with R.C.No.44(A)/2004 (hereinafter referred to as the present offence) on 25th November 2004. The

said crime has been registered on 29th September 2004. That offence has been recorded when the investigating agency while investigating the offence registered as R.C.No.36(A)/2004 came across huge wealth, which was found in the premises belonging to or in possession of the Applicant. On the basis of those revelations, said offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act'), has been registered. The Applicant is in judicial custody in connection with the present offence since 1st December 2004. The prosecution moved an application before the lower Court for allowing further remand to judicial custody for 14 days. That application has been granted by the lower Court by order dated 3rd December 2004. By the present Application, the Applicant not only takes exception to the said order allowing further remand to judicial custody, but also seeks to be released on bail in connection with the alleged offence.

3. Before I proceed to deal with the submissions canvassed on behalf of the Applicant, it is relevant to note that a complaint was filed

against the Applicant, by one Mr.Ramesh Agarwal, on 2nd July 2004, alleging that the Applicant was demanding bribe in the amount of Rs.1.5 crores, out of which, part of the amount was paid and further sum of Rs.25,00,000/- (Rupees Twenty-five Lakhs) was to be made over to the Applicant. In connection with the said complaint, a trap was laid as search warrants were obtained. The trap was conducted on 23rd September 2004 on which date, the Applicant came to be arrested in connection with the said complaint of Mr.Ramesh Agarwal and offence under Section 7 read with Section 13(1)(d) of the Act came to be registered. During the investigation of the said crime, as mentioned earlier, huge wealth in cash as well as in the form of jewellery and other documents regarding several immovable properties totally worth about Rs.6.35 crores have been found. On that basis, the present offence has been registered on 29th September 2004 being R.C.No.44(A)/2004. Insofar as earlier offence is concerned, since the charge-sheet was not filed within the statutory period of sixty days, the Applicant was directed to be released on bail by the order of the lower Court on 25th

November 2004. On the very day, the prosecution has shown the Applicant as arrested in connection with the present offence i.e. R.C.No.44(A)/2004, which is under Section 13(1)(e) of the Act.

4. In the above backdrop, the argument of the Applicant proceeds, mainly relying on the decision of the Apex Court in the case of **Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J.Kulkarni reported in (1992) 3 SCC 141**. Emphasis was place on exposition in Paragraph 11 of this decision to contend that the recovery of wealth allegedly amassed by the Applicant, which is disproportionate to his known sources of income, came to the light in connection with the same case or occurrence, for which the Applicant came to be arrested on 23rd September 2004; and if it is so, the prosecution cannot be allowed to take advantage of the fact that another offence has been registered, in respect of which, the Applicant can be shown as arrested after the release order passed by the lower Court in the first case. To my mind, the reliance placed on the abovesaid decision is inapposite to the fact

situation of the present case. The Apex Court has made it more than clear that the limitation on the prosecution shall not apply to a "different occurrence" in which complicity of the arrested accused is disclosed. In the present case, the Applicant was shown as arrested in relation to R.C.No.36(A)/2004 in response to the complaint lodged by Mr.Ramesh Agarwal for demand made by him by illegal means. In connection with that complaint, offence has been registered as one under Section 7 and Section 13(1)(d) of the Act. Whereas, the present offence was noticed during the investigation of the aforesaid case, being R.C.No.36(A)/2004. Inasmuch as, after the arrest of the Applicant was caused on 23rd September 2004 in relation to the complaint registered as R.C.No.36(A)/2004, the investigation commenced and in that process the premises of the Applicant were searched. Incidentally, during the said search, huge wealth amassed by the Applicant to the extent of about Rs.6.35 crores has been found in the premises which were either in exclusive possession of the Applicant or owned by the Applicant or belonging to the Applicant. In that sense, the

revelation of huge wealth amassed by the Applicant is unconnected with the "occurrence" relating to offence complained in R.C.No.36(A)/2004 as such. In other words, the recovery of huge wealth is referable to an independent transaction or occurrence and is also independent offence under Section 13(1)(e) of the Act. It cannot be doubted that the material facts or ingredients to constitute offence under Sections 7 and 13(1)(d) of the Act are perceptibly different to the one in respect of offence under Section 13(1)(e) of the Act. Besides, the materials relied upon in respect of both the offences is independent. Suffice it to observe that both offences are mutually exclusive and also dependent on "different occurrences". Viewed in this perspective, the decision in the case of **Central Bureau of Investigation vs. Anupam J. Kulkarni (supra)**, has no application to the fact situation of the present case.

5. I find substance in the argument canvassed on behalf of the prosecution that there is something more which has been unravelled during the investigation of the present offence, being

R.C.No.44(A)/2004. When the said offence was originally registered, the wealth disproportionate to the known sources of income of the Applicant was recovered, is stated to be around Rs.6.35 crores. During the investigation of the present offence pursuant to some of the disclosures made by the Applicant while in police custody from 25th November 2004 till 1st December 2004, has led to recovery of further wealth to the extent of Rs.3.4 crores in cash, Rs.25 lakhs in the form of jewellery and also other investment documents, on 19th October 2004. Besides, search was conducted in the premises of the Applicant's brother-in-law at Indore on 28th October 2004, in which unaccounted cash to the extent of Rs.10 lakhs has been recovered. Moreover, during further investigation on 13th December 2004, certain cryptic entries have been deciphered, consequent to which, the prosecution has been able to unravel the fact that the Applicant has given cash loan to one of the witnesses (builder) to the extent of Rs.1.25 crores. In other words, the investigation in R.C.No.44(A)/2004 which is an independent offence, is based on separate set of transactions, is still

in progress. If it is so, no fault can be found with the order passed by the Court below, allowing further remand of the Applicant to judicial custody for further period, as was prayed by the prosecution.

6. It cannot be overlooked that as the investigation in the present case has progressed, further materials have been collected to show the complicity of the Applicant. In this view of the matter, there is no reason to depart from the conclusion reached by the Court below in allowing judicial custody for further period upto 24th December 2004. In matter of such complexity and magnitude, it is but appropriate that the Applicant should be kept in judicial custody, as the investigation is still in progress, and not released on bail.

7. Counsel for the Applicant placed reliance on the decision of Delhi High Court in the case of **Sukh Ram vs. State through CBI reported in 1996 V AD (Delhi) 445** to contend that even the fact

situation of that case was similar to the case on hand. In the present case, it is matter of record that after the Applicant was sent to judicial custody on 1st December 2004, the prosecution has not even interrogated the Applicant for once, since then. Further, the Applicant has deep roots in the society and his custody is no more required for interrogation. In any case, as and when the Applicant is required to be interrogated, he can make himself available. In such a situation, the Applicant should be released on bail by imposing strict conditions, if required.

8. I am not impressed by this argument at all, having regard to the fact situation of the present case. As mentioned earlier, as the investigation in respect of R.C.No.44(A)/2004 has progressed, further revelations have come on record. Huge unaccounted wealth belonging to the Applicant, has been recovered from his close relatives and friends. In such a situation, the prosecution is justified in contending that if the Applicant is released on bail, in all probability, there is likelihood of either tampering with the

evidence or affecting the fair investigation in the case. The fact that the Applicant has not been interrogated since December 1, 2004 will be of no avail. For, the prosecution case is that from some of the disclosures made by the Applicant the investigation has reached upto this pass and is still inconclusive. Besides, the strong possibility of Applicant tampering with the evidence cannot be ruled out. It cannot be overlooked that the crime in question is of unusual proportion and peculiar one. Taking overall view of the matter, I see no reason to either interfere with the order as passed by the Court below or to consider the prayer for bail as pressed into service before this Court, at this stage. Hence, dismissed.

9. Needless to observe that it will be open to the Applicant to apply for regular bail after the investigation is over or after filing of the charge-sheet. It is further made clear that if charge-sheet is not filed in relation to the present case within the statutory period, it will be open to the Applicant to take recourse to such

remedy, as may be permissible by law.

A.M.KHANWILKAR, J.